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| 08/064,945 | 05/20/93 | BARBERG | D B560.120002 |

| EXAMINER | |
|---|---|
| NGUYEN, J. | |
| **ART UNIT** | **PAPER NUMBER** |
| 2405 | 8 |

B4M1/0407

DAVID R. FAIRBAIRN
KINNEY & LANGE
SUITE 1500
625 FOURTH AVENUE SOUTH
MINNEAPOLIS, MN 55415-1659

**DATE MAILED:** 04/07/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on Mar 7, 1994 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☒ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____.

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1 – 11 are pending in the application.
   Of the above, claims 3 – 11 are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1 and 2 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

The drawings are objected to because it appears that elements such as 42, 152, 164, and others in Fig. 7 should be appropriately crosshatched. Correction is required.

Applicant is required to submit a proposed drawing correction in response to this Office action. However, correction of the noted defect can be deferred until the application is allowed by the examiner.

Applicant's election without traverse of the species shown in Figs. 5-6 in Paper No. 7 is acknowledged.

Claims 3-11 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected species. Election was made **without** traverse in Paper No. 7.

The disclosure is objected to because of the following informalities: on page 11, line 11, it appears that "6" should be --7--. Appropriate correction is required.

Claims 1 and 2 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For clarity, it appears that "wrapping" (claim 1, line 8) should be changed to --winding--, and that --the-- should be inserted before "flexible" (claim 1, lines 10 and 12).

In claim 1, line 1, it is not clear what is meant by "managing".

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1 and 2 are rejected under 35 U.S.C. § 103 as being unpatentable over Harrill.

Harrill discloses a storing and winding device having substantially all the claimed features including a container 12 having "first access hole" 70, a spool 10 having a "top" 38 with a "second access hole" through which the cord 86 emerges as shown in Fig. 2, a "bottom" 42, a "column" around which the cord is

wound, a retainer 54, and a means for rotating 60. Note also the "foot plate" 64 having three mounting holes (not referenced) shown in Fig. 1. The three mounting holes comprise two round holes and one trapezoidal-shaped hole in between, any of which can be used for mounting. What is not disclosed is for the plate to be secured to the base of the container. However, to instead secure the "foot plate" 64 to the base of the container would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as ornamental preference and costs.

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 19 of copending application Serial No. 08/049,733. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to a person having ordinary skill in the art to provide the foot plate with holes so that the device can be conveniently hung for storage and with a retainer to retain the spool within the container so that it does not fall out therefrom.

Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting

as being unpatentable over claim 19 of copending application Serial No. 08/049,733 in view of Harrill.

This is a *provisional* obviousness-type double patenting rejection.

Claim 19 of the copending application recite all the claimed features except for holes in the foot plate, a retainer, and a knob as the means for rotating. Harrill, as advanced above, discloses a knob 60 for rotating the reel and holes in the "foot plate" 64 for hanging in storage. A retainer 54 retains the spool within the container. It would have been obvious to a person having ordinary skill in the art to provide the foot plate with holes as taught by Harrill so that the device can be conveniently hung for storage , with a knob as taught by Harrill as the means for rotating as is well known in the art, and with a retainer as taught to retain the spool within the container so that it does not fall out therefrom.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smith, Schwartz, Nederman, and Benit et al. are cited to show other mounting structures for reels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Nguyen whose telephone number is (703) 308-2689.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0771.

John Q. Nguyen

Patent Examiner

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